

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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TRUSTEES OF EMPIRE STATE CARPENTERS
ANNUITY, APPRENTICESHIP, LABOR-
MANAGEMENT COOPERATION, PENSION
AND WELFARE FUNDS,

Plaintiffs,

-against-

MEMORANDUM & ORDER
13-CV-3089 (JS) (WDW)

PHICON CONSTRUCTION,

Defendant.

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APPEARANCES

For Plaintiffs: Charles R. Virginia, Esq.
Richard B. Epstein, Esq.
Elina Turetskaya, Esq.
Virginia & Ambinder LLP
111 Broadway, 14th Floor
New York, NY 10006

For Defendant: No appearances.

SEYBERT, District Judge:

Currently pending before the Court is plaintiffs Trustees of Empire State Carpenters Annuity, Apprenticeship, Labor-Management Cooperation, Pension and Welfare Funds' ("Plaintiffs") motion for default judgment and Magistrate Judge William D. Wall's Report and Recommendation ("R&R"). For the following reasons, the Court ADOPTS this R&R in its entirety.

BACKGROUND

Plaintiffs commenced this action on May 28, 2013 against defendant Phicon Construction ("Defendant") seeking to confirm an arbitration award entered in favor of Plaintiffs.

Specifically, Plaintiffs brought this action pursuant to Section 502(a)(3) of the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, 29 U.S.C. § 1132(a)(3); Section 301 of the Labor Management Relations Act of 1947, as amended 29 U.S.C. § 185; and Section 9 of the Federal Arbitration Act, 9 U.S.C. § 9 regarding an arbitrator's award rendered pursuant to a collective bargaining agreement between Northeast Regional Council of Carpenters and Defendant. Defendant did not answer or otherwise appear in this action.

Plaintiffs requested a certificate of default on July 8, 2013 (Docket Entry 5), which was entered by the Clerk of the Court that same day (Docket Entry 6). On July 30, 2013, Plaintiffs moved for default (Docket Entry 7), and, on August 16, 2013, the Court referred Plaintiffs' motion to Judge Wall (Docket Entry 9).

On February 10, 2014, Judge Wall issued an R&R analyzing Plaintiffs' motion under the standard for default judgment as well as the standard for an unopposed motion for summary judgment. Ultimately, Judge Wall recommends that the arbitrator's award be confirmed and that Plaintiffs be awarded a total of \$46,871.03.

No party has objected to any portion of Judge Wall's R&R.

DISCUSSION

In reviewing an R&R, a district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). If no timely objections have been made, the "court need only satisfy itself that there is no clear error on the face of the record." Urena v. New York, 160 F. Supp. 2d 606, 609-10 (S.D.N.Y. 2001) (internal quotation marks and citation omitted).

Here, no party objected to Judge Wall's R&R. And the Court finds his R&R to be correct, comprehensive, well-reasoned, and free of any clear error. Accordingly, the Court ADOPTS it in its entirety.

CONCLUSION

Judge Wall's R&R is ADOPTED in its entirety, and Plaintiffs' motion for default/unopposed summary judgment is GRANTED. Plaintiffs are hereby awarded a judgment against Defendant in the amount of \$46,871.03, broken down as follows:

- (1) unpaid contributions in the amount of \$31,284.38;
- (2) interest of \$7,284.27 through May 31, 2013, plus additional interest at the rate of .75% per month through the date of judgment;
- (3) liquidated damages in the amount of \$6,256.88;

(4) attorneys' fees in the total amount of \$978.00;
and

(5) costs in the total amount of \$1,067.50.

The Clerk of the Court is directed to enter a Judgment consistent with this Memorandum and Order and to mark this matter CLOSED.

SO ORDERED.

/s/ JOANNA SEYBERT
Joanna Seybert, U.S.D.J.

Dated: March 3, 2014
Central Islip, NY